

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**

<b>IN THE MATTER OF:</b>  <b>PROMISE CITY</b> Wayne County, Iowa	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>NO. 2008-WW-24</b>
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**TO:** City of Promise City  
c/o Honorable Mayor  
PO Box 93  
Promise City, IA 52583

**I. SUMMARY**

The Iowa Department of Natural Resources (Department) and Promise City (City) hereby agree to the following Administrative Consent Order (Order). The City agrees to install a centralized sewer system and wastewater treatment system, in compliance with the terms of this Order. In the interest of avoiding litigation, the parties agree to the following provisions.

Any questions or response regarding this Order should be directed to:

**Relating to technical requirements:**

Janet Gastineau, Environmental Specialist  
IDNR Field Office #5  
401 S.W. 7<sup>th</sup>, Suite 1  
Des Moines, Iowa 50309-4611  
Ph: 515/725-0334

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney at Law  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-0824

**II. JURISDICTION**

The parties hereby agree that this Order is issued pursuant to Iowa Code section 455B.175 which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

The Department and the City agree to the following statement of facts:

1. The City is a small unsewered community located in Wayne County, between Corydon and Centerville on Highway 2. The population reported by the 1990 census was 105. Those on-site septic tanks that are not followed by lateral fields discharge directly into storm water ditches in town. This is a prohibited discharge that the City has been required to correct.

2. On October 25, 1972, the State Department of Health, Water Pollution Control Division sent a letter to the Environmental Protection Agency (EPA) regarding the City's "[a]pplication for Federal Assistance for Public Works and Facility Type Projects." This letter informed the EPA that "[n]o engineering report or application for a construction grant, under provisions of the Federal Water Pollution Control Act for sewage treatment, has been received from this community." Further "[u]pon completion of preliminary engineering report and receipt of an application, we would be happy to consider the project for priority for a grant."

3. On July 26, 1974, a letter from the Iowa Department of Environmental Quality was addressed to the Mayor of Promise City (Mayor) approving a priority list that did not include the City.

4. On October 30, 1974, a letter from the Iowa Department of Environmental Quality was addressed to the Mayor encouraging the City to apply for a Step 1 grant to assist with the engineering planning and studies.

5. On June 6, 1990, the Department sent the City a copy of an inspection report which documented illegal discharge of raw sewage into the roadside ditch within the City from Trinity Faith Church. This report also discussed the results of an investigation by the State Health Department which confirmed that the discharge of improperly treated wastewater to roadside ditches and tile lines was widespread within the City. The Department informed the City that it was in violation of Iowa Code section 455B.186 (1990) and 567 IAC 69 (1990) and that it must immediately initiate the necessary technical and financial planning to eliminate the conditions of pollution or to bring the individual systems up to approvable standards.

6. On December 27, 2000, Janet Gastineau an Environmental Specialist for the Department, conducted an investigation. Snow cover precluded the ability to observe whether a discharge had occurred. However, the ditch south of Highway 2 had flowing water so a sample was collected and analyzed for fecal coliform. This sample revealed that the fecal coliform level was 680,000/100ml.

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7. On January 3, 2001, a Notice of Violation (NOV) was sent to the City informing it of the fecal coliform level and requiring submittal of a Plan of Action in accordance with 567 IAC 64.7(6) by August 1, 2001. The NOV also informed the City that the discharge was not only in violation of 567 IAC 62.1 but that it also posed a threat to public health. Consequently, the problem must be addressed by either upgrading the private systems or installing a central wastewater collection and treatment system.

8. On January 12, 2001, a letter was received by the Department from Midwest Assistance Program (MAP). This letter informed the Department that a representative from MAP was contacted by the City regarding whether MAP would work with the City on its wastewater problems.

9. On July 27, 2001, a City approved Plan of Action was submitted to the Department by Garden & Associates, LTD. (Garden). This Plan included two alternatives.

10. On October 4, 2001, the Department sent the Mayor and City Council a letter informing them that the Plan of Action had been reviewed by the Department. However, the Department determined that out of the two alternatives presented, the first was the preferred solution and that the other should be explored only if all other wastewater options were exhausted. Further, the Department informed the City that there was no mention of funding, thus a financing plan must be submitted to demonstrate the City's ability to construct, operate, and maintain wastewater facilities in the time frame presented in the implementation schedule.

11. On March 18, 2002, the Department sent a letter to the City informing it that the Plan of Action and implementation schedule had been approved. This letter also discussed that the financial information submitted by the City made it apparent that financial assistance would be needed from both the Iowa Department of Economic Development and from the United States Department of Agriculture.

12. On September 20, 2002, Garden sent the Department a letter on behalf of the City informing it that the City and the City of Plano (Plano) had not obtained funding for the 2003 fund year. The letter stated that the City intended to re-apply for project funding of its joint wastewater system during the next funding cycle. If the City was successful in obtaining funding in the 2003/2004 cycle, then the completion of improvements would be delayed until November 2005.

13. On December 15, 2003, Garden sent a letter to the Department informing it that the City and Plano was proceeding with the development of a wastewater collection and treatment system that would jointly provide wastewater utility in the unsewered communities. Further, numerous variances were requested. An additional letter was sent to the Department on December 16, 2003, requesting another variance.

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14. On January 14, 2004, a letter was sent to the City and Plano with comments regarding the requested variances and the willingness to process the request pending submittal of additional information.

15. On September 21, 2005, Jim Stricker, Supervisor of the Department's Field Office 5, attended a Promise City, City Council meeting. During this meeting the Mayor, council members and residents were informed of their options to upgrade the sewer system by either installing an onsite waste water treatment facility or installing a central collection system. In addition, suggestions were made as to where the City could seek funding for such improvements.

16. By November 15, 2005, the City had applied for United States Department of Agriculture Rural Development (USDA-RD) construction funds.

17. On February 9, 2006, Mark McClain the current Mayor of the City signed Administrative Consent Order No. 2006-WW-07 this was signed by the Director of the Department on March 13, 2006. Therefore, on that date it became final. This Order required that the City do the following:

1. By June 15, 2006, submit a complete preliminary engineering report;
2. By February 15, 2007, the City is required to submit complete final plans and specifications meeting the Department's design standards for the centralized sewer and wastewater systems;
3. By August 15, 2007, award a construction contract for the project and begin construction of the project by spring 2008, but no later than May 1, 2008;
4. By October 30, 2008, complete construction of facility improvements; and
5. By November 30, 2008, comply with final effluent limits.

To date, none of the above requirements have been met.

18. On March 12, 2007, a telephone call was held between Carrie Schoenebaum, an Attorney for the Department, Mr. Stricker and Mayor McClain. This call was arranged so that the parties could discuss why the City had not complied with Administrative Consent Order No. 2006-WW-07. During the course of that telephone conversation Mayor McClain stated that the City had not complied because they had applied for, but had not received, a Community Development Block Grant (CDBG). The Department requested that a copy of the CDBG application be submitted to the Department no later than March 26, 2007. Further, Mr. Stricker explained that compliance with

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Administrative Consent Order No. 2006-WW-07 would assist the City in obtaining a CDBG.

19. On March 15, 2007, Mary Haines, City Clerk, faxed the Department a letter stating that "[s]ince she began as city clerk in November of 2006," she had not received any information with regard to the City taking any steps towards applying for a CDBG. To date, the City has not provided the Department with a copy of its CDBG application.

20. On October 2, 2007, the City signed Administrative Consent Order 2007-WW-15. This Order was signed by the Director on October 8, 2007, therefore, on that date it became final. This Consent Order required that the City submit a complete preliminary engineering report to the Department by November 15, 2007. A preliminary engineering report was not submitted to the Department until December 14, 2008. The report that was submitted was incomplete and was the same as that which was submitted by the City to the Department in 2004.

21. On April 8, 2008, the City submitted a revised schedule to the Department and requested that Administrative Consent Order 2007-WW-15 be amended.

#### **IV. CONCLUSIONS OF LAW**

The parties agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state without or contrary to a permit from this Department. Iowa Code section 455B.183 prohibits the operation of a waste disposal system without a permit from this Department.

2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the construction and operation of waste disposal systems and the discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60-69. Subrule 64.3(1) prohibits the operation of any waste disposal system without a permit. Subrule 62.1(1) prohibits the discharge of a pollutant without a permit. The City has been in violation of the above provisions due to its unauthorized discharges of sewage.

#### **V. ORDER**

THEREFORE, the Department hereby orders and the City agrees to meet the following schedule for construction of waste disposal facilities required to meet applicable legal standards:

1. By September 1, 2008, submit a complete preliminary engineering report to the Department. This report must be approved by the Department;

2. By November 15, 2008, apply for a Community Development Block Grant;

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3. By December 1, 2008, the City is required to submit complete final plans and specifications meeting the Department's design standards for the centralized sewer and wastewater systems;

4. By January 15, 2010, award a construction contract for the project and begin construction of the project no later than May 1, 2010;

5. By October 30, 2010, complete construction of facility improvements;

6. By November 1, 2010, comply with final effluent limits;

7. Pay an administrative penalty of \$2,800.00 to the order of the "Iowa Department of Natural Resources" subject to the following conditions:

a. Pay \$1,400.00 of the amount within 30 days of the date the Director signs this Order.

b. The remaining \$1,400.00 penalty amount will be waived by the Department if the City complies with the deadlines contained in sections V.1-V.6 of this Order. If the City fails to comply with any of the deadlines contained in sections V.1-V.6 of this Order then \$1,400.00 shall be due to the Department immediately; and

8. The City agrees to the payment of a stipulated penalty in the amount of \$200.00 per day for violation of the deadlines contained in sections V. 1-3, above and \$200.00 per day for failure to comply with the compliance deadline contained in section V.5, above.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with the assessment of penalties and stipulated penalties for violations of the schedule in this Order.

The penalties stipulated to by the parties in this Order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to the City for failure to make the expenditures needed to stay on schedule. Such penalties are related to the probable severity of the violations in that not meeting the schedule in this Order is a fairly serious matter in view of past deficiencies. The penalties would also

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be related to future culpability in that the City has been put on notice by this Order that stipulated penalties will result if the schedule contained in this Order is not met.

2. **Economic Benefit:** The City saved time and expense by not complying with the schedule contained in Administrative Order No. 2007-WW-15. At this time the Department has decided not to assess a penalty for this factor.

3. **Gravity of the Violation:** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. An unauthorized discharge of raw sewage poses a threat to the environment. Moreover, the City has entered 2 prior orders with the Department and it has failed to comply with both. Nevertheless, at this time a penalty will not be assessed for this factor.

4. **Culpability:** The City violated Administrative Consent Order No. 2007-WW-15. In that Consent Order the City agreed to the payment of stipulated penalties in the amount of \$100.00 per day for failure to submit a complete preliminary engineering report to the Department by November 15, 2007. The report that was submitted was incomplete and it was submitted 28 days late. Therefore, \$2,800.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of the City. By signature to this Order, all rights to appeal this Order are waived.

**VIII. NONCOMPLIANCE**

Compliance with sections V.1 – V.7 of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. The Department reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this Order.

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Brenda DeVore  
MAYOR OF PROMISE CITY

Dated this 31 day of  
July, 2008

Richard A. Leopold  
Richard A. Leopold DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 8 day of  
August, 2008

City of Promise City, Field Office 5, Carrie Schoenebaum, Janet Gastineau, I.C.1.